# STATE OF MICHIGAN

# COURT OF APPEALS

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TALYA ROTHFELD,

Plaintiff-Appellee,

v

CAPITAL AREA TRANSPORTATION AUTHORITY,

Defendant-Appellant,

and

DAVID H. STANFIELD,

Defendant.

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UNPUBLISHED
January 26, 2010

No. 288938
Ingham Circuit Court
LC No. 07-001852-NI

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

Defendant Capital Area Transportation Authority (CATA) appeals by leave granted the trial court's order denying defendant's motion for summary disposition in this personal injury action. Because plaintiff created a question of fact concerning the bus driver's alleged negligence, the trial court did not err when it denied defendant's motion for summary disposition, we affirm.

On December 12, 2006, plaintiff Tayla Rothfeld and fellow student Amy Spanske entered a passenger bus driven by defendant David Stanfield on the Michigan State University campus. Spanske boarded first, paid, and took a seat in the middle of the bus. According to plaintiff, she boarded, and stood near the driver as she searched for money in her purse. The bus began to move forward slowly, "idling" forward even as plaintiff paid. Plaintiff turned and walked toward the back of the bus. The floor was wet from the moisture outside. Plaintiff maintained that she had not yet reached the area where the seats began when the bus moved forward "with a jolt." Plaintiff stated that the driver, who appeared impatient, "floored it" causing the bus to accelerate "really, really" quickly. As the driver accelerated, plaintiff slid forward on the water, fell backwards, and hit her head on the floor of the bus. Spanske's account was substantially similar. As did plaintiff, Spanske maintained that the driver was impatient, he began to idle forward as plaintiff paid, and then the bus made a forward jolt, "like [the driver] had stepped on the gas pretty hard." When asked whether she noticed anyone else with any odd body

movement, Spanske stated that plaintiff was the only one standing at the time, but "even in my seat I moved back from the motion." Spanske, like plaintiff, testified that it had been raining and the floor of the bus was slippery.

Plaintiff brought this personal injury action, alleging that Stanfield was negligent in his operation of the bus. CATA moved for summary disposition pursuant to MCR 2.116(C)(10),[1] arguing that the sudden movement of the bus was a normal incident of travel and was insufficient to establish negligence. After examining prior case law construing this doctrine, the trial court denied the motion. It ruled in pertinent part that plaintiff had created a question of fact concerning Stanfield's negligence, given the testimony concerning his excessive acceleration and the fact that the bus floor was wet and slippery.

We review de novo a trial court's decision on a motion for summary disposition. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007). A motion for summary disposition pursuant to MCR 2.116(C)(10) should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A genuine issue of material fact exists when reasonable minds could differ after drawing reasonable inferences from the record. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing this issue, we must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence and construe them in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

Regarding the instant claim of negligence, our Supreme Court and this Court have developed what the parties refer to as the "usual incidents of travel" doctrine. A carrier owes its passengers the common-law duty of due care, defined as "the duty to exercise such diligence as would be exercised in the circumstances by a reasonably prudent carrier." *Frederick v Detroit*, 370 Mich 425, 437; 121 NW2d 918 (1963). However, the sudden stopping or starting of a bus is not by itself adequate evidence of negligence in the operation of the bus. *Getz v Detroit*, 372 Mich 98, 101-102; 125 NW2d 275 (1963). Sudden jerks or jolts in stopping to let off and take on passengers and in starting are among the usual incidents of travel that passengers must reasonably anticipate and the fact that a passenger is injured thereby is inadequate to establish negligence. *Id*. The carrier may, however, be liable if the jerk or jolt was "unnecessarily sudden or violent." *Id*.

> While a carrier may be held liable if a passenger is injured because a jerk or jolt of its vehicle was unnecessarily sudden or violent, ordinarily sudden jerks or jolts in stopping to let off and take on passengers are among the usual incidents of travel which the passenger must reasonably anticipate.
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> Sudden jerks or jolts in stopping to let off and take on passengers and in starting are among the usual incidents of travel on trolley buses which every passenger must expect and mere fact that a passenger is injured thereby will not of

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[1] Plaintiff dismissed the claims against defendant Stanfield.

> itself make out a case of negligence which will render the carrier liable although carrier may be liable if the jerk or jolt is unnecessarily sudden or violent.
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> Here there was no showing that the jerk, jolt or jar was unnecessarily sudden or violent. Under the above holdings no case of actionable negligence sufficient to go to a jury was made out. [*Getz*, 372 Mich at 101-102 (internal citations and quotations omitted).]

In addition, a bus (or streetcar) '"may be started without waiting for a passenger to reach a seat after entering a vehicle, unless there is some special and apparent reason to the contrary.'" *Getz*, 372 Mich at 100, quoting *Ottinger v Detroit United Railway*, 166 Mich 106; 131 NW 528 (1911).

In *Getz*, the plaintiff was standing on the defendant's bus when the driver stepped on the gas, took his foot off the gas, and put his foot back on the gas. The plaintiff maintained that the driver's actions caused the bus to jerk twice, jarring her and causing her to fall backward and sustain injury. Our Supreme Court affirmed the trial court's grant of judgment notwithstanding the verdict in the defendant's favor. *Getz*, 372 Mich at 99, 102. The *Getz* Court cited with approval the holding in *Ottinger*. It found that the fact that the "healthy, able-bodied woman who performed hard work as a printing press feeder, at which labor she stood on her feet all the time" was 54 years of age, 5 feet and 4 inches tall, and weighed 210 pounds did not constitute a "special and apparent" reason for the driver to wait until she was seated. *Id*. at 99-100. The *Getz* Court also distinguished *Mitcham v Detroit*, 355 Mich 182, 186-187; 94 NW2d 388 (1959), in which evidence of a bus driver's swerving, abrupt stop, excessive speed, weaving and quick turning, repeated lurching from side to side, and following another driver too closely, created jury questions regarding whether the driver operated the bus "at a speed and in a manner unsafe for the conditions present." *Getz*, 372 Mich at 101.

Plaintiff relies on *Smith v Dep't Street Railways, City of Detroit*, 46 Mich App 291; 207 NW2d 924 (1973). In *Smith*, the plaintiff was injured when she was thrown off of her bus seat as the bus driver turned a corner. She testified that "she saw the driver turning his steering wheel very fast around the curve," and it felt like the bus hit something. *Id*. at 294. This Court concluded that "the evidence of an unexplained lurch and resulting fall on the bus, coupled with uncontroverted testimony showing icy [weather] conditions and the bus driver turning the steering wheel fast around the corner, and plaintiff's observation that it felt like the bus hits something is sufficient to provide a basis from which an inference of negligence might have been drawn[.]" *Id*. at 295-296.

Viewing the testimony presented in the light most favorable to plaintiff, we conclude that the trial court did not err when it found that plaintiff presented a question of fact concerning whether Stanfield acted negligently, especially given his admitted knowledge of the wet conditions. While this case may not demonstrate as violent a series of actions on Stanfield's part as that shown in *Smith* or *Mitcham*, the testimony presented by plaintiff and Spanske created a question of fact whether plaintiff was subjected to an unnecessarily sudden or violent jerk or jolt given the women's testimony about Stanfield's aggressive acceleration and lack of apparent rationale for doing so. In addition, although defendant argues that the wet weather did not act as a "special and apparent reason" to wait until plaintiff was seated, a reasonable jury could find

that a reasonable driver would wait until his passengers cleared the wet aisle and sat before accelerating, especially before accelerating quickly or "with a jolt."

Under the circumstances, we conclude that plaintiff presented a question of fact that Stanfield acted negligently, despite the existence of the "usual incidents of travel" doctrine. "[O]ur law possesses no special grudge against possible recovery by passengers against public carriers in cases of this nature. . . ." *Mitcham*, 355 Mich at 187, and, on this record, plaintiff has presented a material question of fact.

Affirmed. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Pat M. Donofrio
/s/ Patrick M. Meter
/s/ Christopher M. Murray